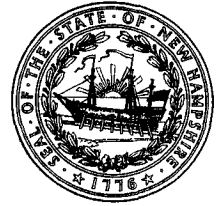




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

July 12, 2005

Carole Dayton  
5 Shaw Road  
Bedford, NH 03110

Re: Docket No. AF 05-059 Administrative Fine by Consent Agreement

Dear Ms. Dayton:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on July 11, 2005. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

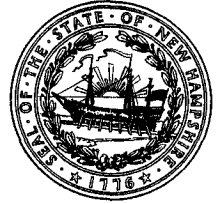
Sincerely,

**COPY**  
Michael P. Sclafani,  
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner  
Harry T. Stewart, P.E., Director, DES Water Division  
Jennifer J. Patterson, NH DOJ  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Tracy Boisvert, DES WD  
Bedford Conservation Commission  
Mark West, West Environmental, Inc.



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Carol Dayton  
5 Shaw Road  
Bedford, NH 03110

Re: Wetlands File #1995-832

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 05-059**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Carol Dayton, pursuant to RSA 482-A:13. This Administrative Fine by Consent is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH.
2. Carol Dayton is an individual having a mailing address of 5 Shaw Road, Bedford, NH 03110.

**III. BACKGROUND**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. Carol Dayton is the owner of property located at 5 Shaw Drive, identified on Town of Bedford tax maps as Map #13, Lot 12 ("the Property").
5. On May 2, 2000 DES issued Administrative Order WD-2000-01 ("the Order") to Carol

Dayton. The Order cited Ms. Dayton for violating RSA 482-A:3, I by filling approximately 900 square feet of wetlands to install a fence, failing to install property erosion control measures, and causing siltation in a wetland and brook on the Property without a permit from DES.

6. The Order required Ms. Dayton to submit a restoration plan prepared by a qualified wetland scientist for DES review and approval for removal of 900 square feet of fill in wetlands on the Property, retain a qualified wetland scientist to supervise the implementation of the restoration plan and subsequent progress reports, and to implement the removal and restoration plan under the supervision of a qualified wetland scientist upon approval and as conditioned by DES.

7. On May 24, 2005, DES was contacted by Mark West of West Environmental Inc. on behalf of the owner of the property. Mr. West's correspondence included photographs of the Property showing the current conditions which show that the fence has been removed and the bank going down to the stream is now vegetated with shrubs and saplings.

8. On June 2, 2005, DES received a Wetland Buffer Planting Plan ("the Plan") from West Environmental Inc. The Plan proposes to retain the remaining fill in wetland, remove any debris or yard waste from the area, and enhance approximately 1,200 square feet of the bank with topsoil and additional plantings.

#### IV. ALLEGATIONS

1. Carol Dayton violated RSA 482-A and Administrative Order WD-2000-01, E.1 by failing to submit a restoration plan for the removal and restoration of 900 square feet of wetland. Env-C 614.06(e) specifies a fine of \$2,000 for this violation.

2. Carol Dayton violated RSA 482-A and Administrative Order WD-2000-01, E.3 by failing to implement the restoration plan. Env-C 614.06(e) specifies a fine of \$2,000 for this violation.

#### V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Of the total \$4,000 being sought, \$2,000 shall be suspended contingent upon the following:

a. Carol Dayton will install siltation and erosion controls on the Property to prevent any water quality degradation to adjacent wetlands or surface waters while the buffer enhancement is being performed;

b. By **July 15, 2005**, Carol Dayton will carry out the buffer enhancement as described on the Plan dated June 1, 2005 and received by DES on June 2, 2005 (attached hereto as Exhibit A) as follows:

1. Remove any debris or yard waste from the area;

2. Loam the enhancement area with 4 inches of topsoil around the existing saplings and shrubs; and

3. Plant, seed, and mulch the enhancement area as outlined in the Plan.

c. Carol Dayton will perform the buffer enhancement in accordance with the following conditions:

1. All buffer enhancement work shall be performed by hand;
2. Any debris or yard waste removed from the Property shall be placed out of the RSA 482-A jurisdiction;
3. All buffer enhancement work shall be overseen and monitored by a Certified Wetland Scientist;

d. By **July 31, 2005**, Carol Dayton shall submit a follow up monitoring report and photographs prepared by a Certified Wetland Scientist documenting compliance with the terms of this agreement.

e. By **July 31, 2005**, Carol Dayton shall submit an as-built plan prepared by a Certified Wetland Scientist delineating the edge of the existing wetland boundaries on the Property.

2. Failure of Carol Dayton to comply with the terms of this Agreement shall render the suspended portions of the fine due and payable upon notice from DES. If Carol Dayton fails to comply with the terms of the Agreement, DES reserves its right to refer this violation to the New Hampshire Department of Justice for imposition of civil and criminal penalties.

3. Carol Dayton agrees to pay the remaining \$2,000 fine upon execution of this Agreement.

4. Payments due under this Agreement shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

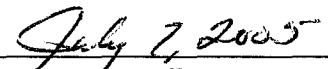
6. By executing this Administrative Fine by Consent, Carol Dayton waives her right to a hearing on or any appeal of the administrative fines identified in Paragraph IV #1 through #2, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Carol Dayton, the Director of the Water Division, and the Commissioner of DES.


8. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.


WHEREFORE, the parties voluntarily accept the terms of this Agreement.

**COPY**  
  
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Carol Dayton, Owner

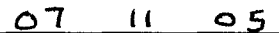
  
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Date

Department of Environmental Services

**COPY**  
  
\_\_\_\_\_  
Harry T. Stewart, P.E., Director  
Water Division

  
\_\_\_\_\_  
Date

**COPY**  
  
\_\_\_\_\_  
Michael P. Nolin, Commissioner

  
\_\_\_\_\_  
Date

cc: Gretchen R. Hamel, Administrator, DES Legal Unit  
Public Information Officer, DES PIC Office  
Bedford Conservation Commission  
Mark West, West Environmental, Inc.  
Wetlands File #1995-832